

Notice of Allowability

Application No.

10/730,768

Examiner

Ashwin Mehta

Applicant(s)

EGGERLING, DONALD G.

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the paper filed 04 June 2007 and tel. int. 17 August 2007.
2. ☒ The allowed claim(s) is/are 1-24.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☒ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☒ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date attached.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Examiner's Amendment

1. The amendment filed June 4, 2007 was entered.
2. The objection to the specification is withdrawn in light of the amendment.
3. The objection to claim 21 is withdrawn in light of its amendment.
4. The warning that claim 6 would be objected is withdrawn upon further consideration.
5. The rejection of claims 1-24 under 35 U.S.C. 112, 2nd paragraph, is withdrawn, in light of the claim amendments, and Applicant's written assurance that seed of corn variety LH360 will be deposited with the ATCC, and the claims amended to recite the accession number, upon notification of allowable subject matter.
6. The rejection of claims 1-24 under 35 U.S.C. 112, 1st paragraph, is withdrawn in light of Applicant's written assurance that seed of corn variety LH360 will be deposited with the ATCC, and the claims amended to recite the accession number, upon notification of allowable subject matter.
7. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR

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1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Hanson on August 17, 2007.

The claims have been amended as follows:

In claim 16, line 3, the recitations, "yield enhancement," and "improved nutritional quality," were deleted.

In claim 21, line 3, the recitations, "yield enhancement;" and "improved nutritional quality;" were deleted.

In claim 20, line 1, the recitation, --that confers the new trait-- as inserted after "locus".

8. Claims 1-24 are allowed.

REQUIREMENT OF ALLOWANCE UNDER 37 CFR §§ 1.801-1.809

9. Applicant has stated in the paper filed June 4, 2007 that a deposit of the seeds of the claimed variety will be made with the ATCC and that a declaration certifying the deposit meets the criteria set forth in 1.801-1.809 will be provided. Therefore, no 35 USC § 112, 1st paragraph rejection has been maintained even though it is apparent that seed of inbred corn plant LH360 is

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essential to the claimed invention and that the deposit is necessary for enablement for the claimed invention. Since the application is otherwise in condition for allowance except for the needed deposit, and since the Office has received written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office is authorized to mail Applicant a Notice of Allowance and Issue Fee Due together with a requirement that the needed deposit be made within THREE (3) MONTHS of the mail date of this letter (see 37 CFR § 1.809(c)).

Under 37 CFR 1.809(c)-(d) an applicant is required to make a deposit of seed within three months after the mailing date of the Notice Of Allowance and Issue Fee Due. The time period for making a biological deposit, and an amendment to add the depository information to the specification and claims, is no longer extendable. See 37 CFR 1.136(c) and 1.809(c), revised in Changes to the Time Period for Making any Necessary Deposit of Biological Material, 66 Fed. Reg. 21090 (April 27, 2001), 1246 Off. Gaz. Pat. Office 104 (May 22, 2001), effective for Notices of Allowability mailed on or after May 29, 2001. Amendments are no longer permitted to be filed after the payment of the issue fee. See 37 CFR 1.312, revised in Changes to Application Examination and Provisional Application Practice, 65 Fed. Reg. 14865, 14869 and 14873 (March 20, 2000), 1233 Off. Gaz. Pat. Office 47, 50 and 54 (April 11, 2000), effective on May 29, 2000. Failure to make the needed deposit of seeds will result in **ABANDONMENT** of the application for failure to prosecute. The deposit information in the specification and all claims that refer to the instant seeds by name must be amended to include the deposit accession numbers. These amendments should be submitted before the payment of the issue fee as an Amendment After Allowance under 37 CFR 1.312. The statement of deposit in the specification shall contain:

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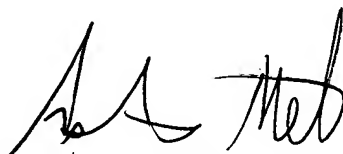
- (1) The accession number for the deposit(s);
- (2) The date of the deposit(s);
- (3) A description of the deposited biological material sufficient to specifically identify and to permit examination; and
- (4) The name and address of the depository. (See 37 CFR 1.809(d))

Contact Information

Any inquiry concerning this or earlier communications from the Examiner should be directed to Ashwin Mehta, whose telephone number is 571-272-0803. The Examiner can normally be reached from 8:00 A.M to 5:30 P.M. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached at 571-272-0975. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300. Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

August 20, 2007



Ashwin D. Mehta, Ph.D.
Primary Examiner
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